

LANGUAGE ACCESS POLICY AND IMPLEMENTATION GUIDELINES

OFFICE OF ACCESS AND OPPORTUNITY

October 10, 2012

I. INTRODUCTION

Most individuals living in the Commonwealth read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2010 census data, approximately 1.38 million or 21% of residents speak a language other than English at home. Persons who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be defined as limited English proficient, or “LEP,” and are eligible to receive language assistance with respect to accessing a particular type of service, benefit provided by the state.

Language for non-English speakers and LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, and/or understanding other information provided by state programs and activities. State agencies provide (in English) an array of services that can be made accessible to otherwise eligible LEP persons. State government is committed to improving the accessibility of these programs and activities to eligible non-English speakers and LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. State agencies have an obligation, when reasonably possible, to reduce language barriers that can preclude meaningful access by non-English speakers and LEP persons to important government services.

II. PURPOSE AND AUTHORITY

In certain circumstances, failure to ensure that non-English speakers and LEP persons can effectively participate in or benefit from state programs and activities may violate Title VI of the Civil Rights Act of 1964, federal Executive Order 13166 and associated Title VI regulations and guidance against national origin discrimination, the state’s anti-discrimination statute – Chapter 151B of the General Laws, and Executive Order 526.

The objectives of these Language Access Guidelines (Guidelines) are to: (a) Improve access to and the quality of state services, programs and activities for non-English speakers and LEP persons; (b) Reduce disparities and delays, if any, in the provision of state services/programs to eligible non-English speakers and LEP persons compared with eligible English speakers; and, (c) Increase agency effectiveness and public satisfaction. Additionally, these Guidelines are meant to establish a common baseline for creating access to non-English speakers and LEP persons. An agency may and should go beyond these Guidelines as needs and circumstances dictate (and, in many instances where the Agency is a recipient of federal financial assistance, it may have to go beyond these Guidelines). Finally, these Guidelines shall serve as the basis for the development of state agency language access plans.

The role of the Office of Access and Opportunity under Executive Order 527 is to ensure non-discrimination, diversity and equal opportunity in all aspects of executive branch operations. Consistent with this authority, the Office of Access and Opportunity seeks to ensure consistency across state agencies in the treatment of LEP persons by way of creating a common baseline among agencies, while recognizing the various roles and needs of these agencies. Inconsistencies and contradictions across state agencies may needlessly increase costs without rendering meaningful access to non-English speakers and LEP persons.

This effort requires a balanced approach. On the one hand, we must ensure that executive branch programs do not leave behind individuals simply because they face challenges communicating in English. On the other hand, we must achieve this goal while not creating undue administrative burdens on agencies. Pursuant to Executive Order 526, executive branch agencies should use these guidelines in developing language access plans.

This Administrative Bulletin is intended for the guidance of executive branch agencies, and nothing in it establishes any legally enforceable rights.

III. GENERAL POLICY

It is the policy of the Commonwealth that programs, services and activities that executive branch agencies normally provide in English be accessible to non-English speakers and LEP persons, pursuant to these Guidelines. In furtherance of this policy, the Commonwealth's executive branch agencies shall take all practical and reasonable steps to provide non-English speakers and LEP persons with meaningful access to services, programs, and activities, and shall work to ensure that such access is not inferior or substantially delayed.

These Guidelines incorporate the much of the substance of Department of Justice guidance relative to language access services. Specifically, these Guidelines are premised on the following factors:

- (1) The number and proportion of non-English speakers and LEP persons served by the agency in its services, programs and activities;
- (2) The frequency with which non-English speakers and LEP individuals come in contact with the service, program or activity;
- (3) The nature and importance of the service, program or activity provided by the agency; and
- (4) The fiscal resources available to the agency and/or costs incurred by the agency.

These Guidelines seek to balance the objective of creating reasonable access to services on the part of LEP persons with administrative fiscal limitations.

Each agency shall develop a language access plan through which it works to implement protocols for providing services to non-English speakers and LEP persons. Said language access plan shall be consistent with these Guidelines. Each agency shall have 120 days from the issuance of these guidelines to develop and implement its language access plan.

IV. AGENCY LANGUAGE ACCESS PLANS

(a) Approach. Each state agency that provides services, programs or activities shall establish a language access plan, whose full implementation shall be subject to the availability of fiscal resources to implement said language access plan. Each language access plan shall be developed following these LEP Guidelines. The language access plan is an administrative blueprint by which an agency attains compliance with language access requirements. The plan outlines the tasks to be undertaken, establishes deadlines by which actions will be taken, identifies responsible personnel assigned to implement the language access plans, and establishes priorities relative to the implementation of such plans. Language access plan protocols are detailed explanations that identify the steps to be followed to access language services, gather data, and deliver services to LEP individuals. After development and implementation of revised language access plans pursuant to these Guidelines, each Agency shall update its language access plan every two (2) years. In the event that said language access plan cannot be fully implemented due to fiscal limitations or costs, the agency head, in consultation with and approval from the Secretary of the Executive Office to whom the agency head reports, shall identify (1) the specific element(s) that require a delay in implementation due to such limitations, (2) a revised time frame for implementing any delayed specific element(s), and shall communicate all, (1) and (2) to the Office of Access and Opportunity.

(b) Plan:

(1) Coordinator. Each state agency shall designate a staff member to serve as the agency's language access coordinator, who shall report to the head of the state agency or his/her designee and shall be responsible for agency implementation and compliance with the agency's language access plan. Nothing in these guidelines shall prohibit an agency head from appointing the diversity director or diversity officer of the agency as the language access coordinator. The agency head shall have ultimate responsibility for complying with Executive Order 526 and these guidelines.

(2) Action Steps. Each plan shall outline the tasks to be completed, establish prioritized timelines, and assign resources, including the following:

(a) Needs Assessment. Each agency shall conduct a needs assessment that includes the following minimal actions:

(1) Identify and characterize the nature and importance of the various services and programs provided by the agency in order to help determine the priorities for providing services to ensure access for non-English speakers and persons who are LEP;

(2) Gather data on the language makeup of the population that is served by the agency. Agency staff should consider whether the data indicates that any particular language groups are not being served or are being under-represented (i.e. – served disproportionately to their presence in the service population). Consistent with this action, each agency should develop an understanding of the proportion of the service population eligible for a particular program, service or

activity and who are non-English speakers or are LEP persons, the frequency with which the agency provides services to non-English speakers and LEP persons and the languages most frequently encountered.

- (3) Identify all points of contact between the agency and the public and all potential language or language-related barriers to services and programs, including the location of offices. This process is meant to identify those agency operations that will come into contact with LEP persons.

Language Resources Assessment. Each agency must also determine what language resources are available to it to deliver services, programs, and activities to non-English speakers and LEP persons:

- (1) Identification of existing staff who are linguistically, culturally, and technically able to deliver services in a language other than English and/or to serve as interpreters.
- (2) Become familiar with language services available under existing state contracts for in-person (i.e. – face to face) interpretation, telephone interpretation, and translation. The agency shall consider what steps will be required to make these language services available for staff use, including needs for equipment and training. For purposes of these guidelines, the term “interpret” shall mean oral communication and the term “translation” shall refer to written communication.

(c) Language Service Protocols

- (1) To supplement in-house language skills, the agency shall determine where language services are needed to assist the public and ensure that resources are identified to provide interpreting and translating as needed.
- (2) Specific protocols must be devised to instruct agency staff on how and when to secure (or procure) language services. Language services should be provided pursuant to these guidelines and the agency’s language access plan.
- (3) Language access plan protocols should be designed for ease of use and with minimal approval or documentation required.

(d) Language Services. Each agency shall provide language access services to assist non-English speakers and LEP persons who are identified as being within the Agency’s service population and/or seek to access services and programs normally offered by the agency in English pursuant to paragraphs (e) and (f) of this section.

- (1) One method of serving non-English speaking and LEP persons is by using linguistically, culturally, and technically competent staff who are able to provide services directly to the client (applicant, beneficiary or customer) in his/her primary language without the need for an interpreter.

- (2) Available, linguistically, culturally, and technically competent staff may be used for in-person (i.e. – face to face) or telephone interpretation to support staff who do not speak or understand the language spoken by the client (applicant, beneficiary or customer) that requires assistance.
- (3) Each agency should make available professional in-person (i.e. – face to face) or telephone interpreters to meet the needs of non-English speaking and LEP persons.
- (4) Agencies may utilize volunteer interpreters from community-based organizations to meet the needs of a non-English speaker or a LEP person seeking access to services, programs or an activity. Agencies should refrain from using family members or friends to provide interpreter services; and, in no event shall an agency allow a minor to provide interpreter services.
- (5) Telephonic interpreters, including agency staff interpreters, should be generally used for interpreting customer telephone contacts.

In making the determination under this paragraph of the type of oral language services needed, each state agency shall consult the following sources of data:

- (i) The 2010 American Community Survey (as updated) available via the United States Census Bureau;
- (ii) Any demographic data, available via public sources, on language ability indicating that individuals speak English "less than very well";
- (iii) Any other language-related information available for use to develop a language access plan that make services, programs and/or activities more accessible to non-English speakers and LEP persons.

As part of updating its language access plan, each state agency shall collect data about the languages spoken and the proportion of non-English and LEP persons speaking a given language in the population that is served by the agency. The Office of Access and Opportunity will also compile and share data with any agency that requests or needs it.

(e) Document Translation. As part of its language access plan, each Agency shall develop and implement a protocol to review all forms, letters, and documents used by the agency to determine which are vital, in whole or in part, to providing meaningful access to non-English speaking and LEP persons. As part of its language access plan, each Agency shall translate such forms, letters, and documents into languages regularly encountered. For purposes of these guidelines, the term “languages regularly encountered” shall mean any language spoken by at least 5% of the population served within a particular agency program, service or activity. Notwithstanding the preceding sentence, where an agency operates regional offices, the agency shall apply the 5% standard to the geographic region served by the regional office.

Pursuant to paragraph (a) of this section, if an Agency determines that meeting this requirement, in whole or in part, is not possible due to fiscal limitations or costs, the Agency shall identify a phased approach to meet such requirements. Said phased approach shall be included in the Agency's language access plan.

(f) Interpretation (Oral Translation). As part of its language access plan, each Agency shall provide interpretation services to non-English speaking and LEP persons, into languages spoken by such non-English speaking and LEP Persons, who seek to access or participate in the services, programs, or activities offered by the Agency. For purposes of these guidelines, the term "languages regularly encountered" shall mean any language spoken by at least 5% of the population served within a particular agency program, service or activity. Where an agency operates regional offices, the agency shall apply the 5% standard to the geographic region served by the regional office. Notwithstanding the 5% standard, each Agency is encouraged but not required to provide universal access to interpretation services.

Pursuant to paragraph (a) of this section, if an Agency determines that meeting this requirement, in whole or in part, is not possible due to fiscal limitations or costs, the Agency shall identify a phased approach to meet such requirements. Said phased approach shall be included in the Agency's language access plan.

(g) Website content. Agency website content shall be periodically reviewed and modified such that vital information to non-English speakers and LEP persons served by the agency is translated or otherwise presented in languages that meet the five percent (5%) threshold. Websites and their content should include appropriate disclaimers developed in consultation with the agency's legal counsel. Agencies, consistent with policies promulgated by the Information Technology Division or the secretariat Chief Information Officer may utilize existing web-based services or programs that translate website content such as Google Translation to meet the requirements of this paragraph.

(h) The Massachusetts Office for Refugee and Immigrants. Each agency, in conducting its needs assessment, in preparing its language access plan, and/or in developing and implementing a training program for its staff should consult the Massachusetts Office on Refugees and Immigrants ("ORI"). ORI has extensive experience in assisting state agencies and in meeting the needs of non-English speakers and LEP populations.

(i) Stakeholder Consultations. Each agency should consult with community-based organizations that provide services to non-English speakers and LEP persons in devising its language access plan.

(j) Training. The agency must develop and implement a plan for ongoing, regular training that ensures agency staff is aware of the contents of the plan and its protocols, including newly hired staff.

(k) Notice. Each agency's language access plan should address the need to inform the public of the availability of language access services. Such information may include, but not be limited to, community outreach, posted notices in public spaces of agency offices, tag lines on agency documents, agency content on the website, and public advertisements. The language access

plan is a public document and shall be made available on the Agency's website in an accessible format and to the public upon request (and payment of standard search and copying fees set by the Secretary of State's Supervisor of Public Records).

(l) Monitoring. Each agency's language access plan should provide for a system to periodically monitor agency compliance with these Language Access Guidelines, as well as the need for any changes in the agency's language access plan and its protocols.

(m) Complaints. In the event that a person wishes to file a complaint regarding an alleged violation of these Guidelines, he/she should file a complaint with the Agency Language Access Coordinator. A complaint may also be filed with the Office of Access and Opportunity, which will refer the matter to the Agency Language Access Coordinator for response and/or redress. In the event the complaint cannot be resolved at the agency level, the Office of Access and Opportunity will seek to resolve the complaint.

Notwithstanding paragraphs (a) and (b), if an agency has developed and implemented a plan or policy pursuant to Federal Guidance or other policy directives to ensure access to state services, programs and/or activities that is substantially equivalent to or greater than the language access plan required by these Guidelines, the agency may utilize said plan or policy in place of the language access plan required by these Guidelines. The agency shall submit the access policy or plan to the Office of Access and Opportunity pursuant to paragraph (2) of subsection (a) of Section VI. The submission shall be accompanied by a cover memorandum that attests that said access policy or plan meets the requirements of the Language Access Plan required by these Guidelines, and the cover memorandum shall be signed by the agency head and the secretary of the executive office to whom the agency head reports.

V. ADDITIONAL POLICY GUIDANCE

In addition to using these guidelines in the development and implementation of its language access plan, each agency should seek to incorporate, as part of its normal operating actions, the following:

- (a) Responsibility. The agency, rather than the LEP person, bears the responsibility for the reasonable provision of language access services. Agency leadership and staff have an affirmative responsibility to assess and record language needs.
- (b) Bilingual staff:
 - (i) Hiring. Using data available on non-English speakers and LEP persons that make up service, program and activity participation, each agency should incorporate in their agency affirmative action and diversity plans a strategy to develop in-house language capacity through the hiring of employees with specific language skills and should designate job descriptions appropriately. This information should also be included in the agency's language access plan.
 - (ii) Staff Interpreters. Linguistically, culturally, and technically competent staff may function as interpreters for other staff, when needs and staffing permits such

action and provided that the interpretation does not have to be provided by a licensed or certified interpreter.

- (iii) Language Sensitive Assignments. Subject to any legal constraints, agency staff should consider the options available to organize, assign or configure employees in order to meet the language needs of persons served by the agency without imposing unfair burdens on bilingual staff.

Language Data. Each Agency should consider the means by which to effectively gather and analyze data on the language needs of those who use the agency's services and programs. Agencies that maintain records specific to individuals, particularly those that provide ongoing services to individuals, should develop the means to identify and record the primary language of the customer, tabulate language data, and mark files with language information so that language access services can be provided as a matter of course in future contacts. Nothing herein is meant to prohibit the executive office from compiling and/or analyzing data and making it available to its constituent agencies.

VI. ROLE OF THE OFFICE OF ACCESS AND OPPORTUNITY

(a) The Office of Access and Opportunity within the Executive Office for Administration and Finance shall:

- (1) Update these guidelines as necessary;
- (2) Receive a copy of each agency's language access plan and unless said language access plan does not conform to these guidelines, approve its use;
- (3) Compile and disseminate to agencies as requested data relative to languages spoken by populations of the Commonwealth;
- (4) Provide information, as requested, to state agencies on language services available under existing state contracts for in-person interpreting, telephone interpreting and translation.
- (5) Provide technical assistance to agencies in the implementation of these guidelines and their language access plans; and,
- (6) Enlist the assistance of the Office of Diversity and Equal Opportunity, the Office of Refugees and Immigrants, and any other state agency to discharge its responsibilities under these guidelines.

(b) The Assistant Secretary of Access and Opportunity (“Assistant Secretary”) shall:

- (1) Review each agency's language access plan;
- (2) Monitor each agency's language access plan for compliance with these guidelines;
- (3) Track, monitor, and look into complaints filed with the Office of Access and Opportunity regarding language access violations at agencies, and where necessary, issue written findings of noncompliance to the state agency regarding a failure to provide language access; provided, the Assistant Secretary shall remit any complaints filed with the Office of Access and Opportunity to the Agency Language Access Coordinator of the agency that is the subject of the complaint, to allow the Agency Language Access Coordinator to try to resolve the complaint first;
- (4) Convene meetings of agency language access coordinators to facilitate information sharing including agency best practices; and,
- (5) Make recommendations to the Governor and his/her cabinet as necessary to implement policies and/or programmatic approaches to ensure equal access to state services, programs and activities.